

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
DELTA DIVISION

CHARLES WILLIAM FIORANELLI,  
Plaintiff

V.

NO. 2:94CV121-B-A

BIC CORPORATION,  
Defendant

**MEMORANDUM OPINION**

This cause comes before the court on the defendant's motion for summary judgment. The plaintiff brought this products liability action alleging injury arising from the intended use of an allegedly defective and unreasonably dangerous BIC lighter manufactured, designed and distributed by defendant BIC Corporation. The plaintiff alleges both a manufacturing defect and a design defect.

**Manufacturing Defect**

The plaintiff sustained burn injuries while attempting to burn a brush pile. One or two days after the accident the subject lighter was found on the ground by the consumed remains of the brush pile with a fracture and bulge in the plastic lighter body. The affidavit of Paul Labrum, the defendant's expert, states: "To a reasonable degree of engineering probability, the actual rupture took place suddenly, after the lighter was exposed to an external heat source for an extended period of time." According to Mr. Labrum, the subject J-5 model lighter is routinely tested to

withstand internal pressures far in excess of the extent to which the lighter is pressurized under "normal use conditions." The plaintiff's expert, Dr. Kirk Rosenhan, examined the lighter and concluded that prior to the fire the propane reservoir in the lighter ruptured and released flammable fluid due to a manufacturing defect in the thickness or strength of the plastic wall of the lighter body.

The defendant moves for summary judgment as to the alleged manufacturing defect claim on the ground that Dr. Rosenhan's theory does not raise a triable issue of fact. Dr. Rosenhan testified in his deposition that he could not conclude that it was more probable that the lighter body ruptured prior to the fire as a result of a manufacturing defect than that it ruptured after the fire as a result of exposure to the heat from the fire. The plaintiff makes no effort to support his manufacturing defect claim in opposition to the motion. The plaintiff asserts:

It is not necessary to determine whether a manufacturing defect existed in this case even though the lighter was found with a split in its side which allowed the propane to escape. A design defect is enough to prevent summary judgment, and the source of the fuel that ignited is unimportant for the purposes of this motion.

The plaintiff further asserts:

A jury could very easily find that the exposed striker wheel on the lighter was the source of the spark that ignited the fire.... Whether the propane from the split in the lighter or

the gasoline from the brush pile was the fuel that was ignited is immaterial.

On a motion for summary judgment, the movant has the initial burden of showing the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 91 L. Ed. 2d 265, 275 (1986) ("the burden on the moving party may be discharged by 'showing'...that there is an absence of evidence to support the nonmoving party's case"). Under Rule 56(e) of the Federal Rules of Civil Procedure, the burden shifts to the nonmovant to "go beyond the pleadings and by...affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" Celotex Corp., 477 U.S. at 324, 91 L. Ed. 2d at 274. Celotex Corp., 477 U.S. at 324, 91 L. Ed. 2d at 274, 275. That burden is not discharged by "mere allegations or denials." Rule 56(e). All legitimate factual inferences must be made in favor of the nonmovant. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 91 L. Ed. 2d 202, 216 (1986). Rule 56(c) mandates the entry of summary judgment "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp., 477 U.S. at 322, 91 L. Ed. 2d at 273. Before finding that no genuine issue for trial exists, the court must first be satisfied that no reasonable trier of fact

could find for the nonmovant. Matsushita Elec. Indus. v. Zenith Radio Corp., 475 U.S. 574, 587, 89 L. Ed. 2d 538, 552 (1986).

Upon due consideration, the court finds that the plaintiff has failed to present any evidence raising a genuine issue as to whether the lighter ruptured before the fire. The plaintiff expressly chose not to address the alleged manufacturing defect and thus made no effort to controvert, by affidavit or otherwise, the affidavit of the defendant's expert. The court finds that Dr. Rosenhan's deposition testimony does not controvert Mr. Labrum's affidavit, with respect to the cause of the rupture. The court finds that no genuine issue of material fact exists and that summary judgment should be entered as to the claim of a manufacturing defect.

#### **Design Defect**

It is undisputed that Johnny Hammonds poured gasoline over the top of a brush pile and, while standing on top of the pile, Hammonds tossed the subject lighter in the direction of the plaintiff standing on the ground. The plaintiff recalls reaching down towards the brush pile to retrieve the lighter and becoming engulfed in a "basketball size flame." The plaintiff alleges that the exposed position of the thumb wheel or spark wheel of the lighter is a design defect in that the wheel can be inadvertently actuated to cause a spark. Dr. Rosenhan is of the opinion that the spark wheel was actuated when the lighter landed on the ground,

thereby causing a spark, "based on the lack of any other spark or ignition-producing phenomenon that I'm aware of."

The defendant challenges Dr. Rosenhan's opinion on the grounds that it is speculative and inadmissible under Rule 702 of the Federal Rules of Evidence and conflicts with undisputed facts. The court at this juncture is not convinced that Dr. Rosenhan lacks qualification as an expert regarding the design of the lighter and the cause of the fire. The court further finds that his opinion does not clearly conflict with undisputed facts. Dr. Rosenhan testified in his deposition that, assuming the lighter was the source of ignition, the spark wheel was within inches of the fuel that was ignited and the spark came in contact with the fuel "within milliseconds." The defendant asserts that there were several seconds between the time the lighter landed on the ground and the ignition of the fire, based on Johnny Hammonds' uncontradicted deposition testimony. The court finds that Hammonds' testimony does not unequivocally establish the time period in question. The defendant further asserts that none of the witnesses place the lighter closer than two feet from the fuel on the brush pile. In fact, the witnesses estimate only the distance between the plaintiff and the brush pile. It is undisputed that the lighter did not reach the plaintiff and thus could have landed within inches of the brush pile. The defendant even notes that the witnesses did not actually see the lighter hit the ground. Upon

due consideration, the court finds that Dr. Rosenhan's deposition testimony regarding the cause of the ignition, absent disclosure of any possible ignition-producing source other than the lighter, is not too speculative to avoid summary judgment.

The court is not convinced that no reasonable trier of fact could find for the plaintiff. Drawing all reasonable factual inferences in favor of the plaintiff, the court finds that Dr. Rosenhan's theory creates a genuine issue of material fact as to the causation of the fire since no other potential source of ignition has been identified. The contested issue of fact, set forth in the pretrial order, as to whether the lighter was used as intended is related to the ultimate issue of the existence of a design defect. The defendant did not specifically argue that, assuming arguendo that the lighter was the source of ignition, there is no genuine issue of material fact as to whether the exposed position of the spark wheel constitutes a design defect. The record is inadequate for the court to sua sponte hold that the subject J-5 model BIC lighter need not have a cap over the spark wheel to be reasonably safe. The court finds that there are genuine issues of material fact and that the defendant is not entitled to summary judgment as to the design defect claim.

### **Conclusion**

For the foregoing reasons, the court finds that the defendant's motion for summary judgment should be granted as to the

manufacturing defect claim and denied as to the design defect claim.

An order will issue accordingly.

THIS, the \_\_\_\_\_ day of May, 1995.

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**NEAL B. BIGGERS, JR.**  
**UNITED STATES DISTRICT JUDGE**